PATENT
Atty. Docket No. 37370-32

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
GARY WAYNE BAGNALL, ET AL.	Group Art Unit: 3643
Serial No.: 10/759,585	Examiner: Rowan, Kurt C.
Filed: January 15, 2004	Conf. No.: 7985
For: LIVE INSECT TRAP	

REPLY BRIEF
ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

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This Reply Brief is submitted in response to the Examiner's Answer, which was mailed on July 6, 2007.

At the outset, it is noted that it is not clear whether the present Examiner's Answer is intended to supplement or to replace the Answer mailed on November 30, 2006. In any event, the present Reply Brief addresses only the arguments expressly raised by the Examiner in the present Answer. If the Examiner is intending to rely upon any arguments presented in the earlier Answer, then the responses to those arguments, set forth in Appellants' Reply Brief filed on January 30, 2007, are incorporated by reference herein. Generally speaking, the arguments raised by the Examiner in the current Answer are addressed below in the order in which they were made.

First, the Examiner argues that Appellants "[have] not provided an objective standard in the specification as to what constitutes reflective means." In response, it is noted that the present claims *do not* in fact recite a "reflective means". Instead, claims 2, 22 and 23 recite the feature that "the side walls of the upper section have an inner surface that is reflective."

As noted previously, a standard with respect to the term "reflective" does in fact exist within the Specification. For example, as pointed out at page 2 lines 13-17 of the Specification (which is referenced on page 3 of the Appeal Brief), the inner surface of the presently claimed upper section preferably is sufficiently reflective to cause trapped insects to become disoriented. In contrast, the applied-art reference Beaton does not disclose anything about an upper section, as presently recited, with side walls having an inner surface that is reflective, much less anything about any level of reflection that would cause insects to become disoriented.

Next, Examiner argues, "The transparent inner wall of Beaton is reflective since it can be seen such as in Figures 3-4." However, there is no support for this statement. Nothing in Beaton's Figures 3 and 4 indicates that the inner wall of Beaton's sleeve 21 is reflective.

Lastly, the Examiner asserts, "The fact that Beaton characterizes the inner wall as transparent or clear does not mean that it does not reflect light." However, reflecting some amount of light, as every real physical surface necessarily must, does not mean that a corresponding surface would be characterized as "reflective". As noted in the Appeal Brief, the Examiner is attempting to read the word "reflective" entirely out of the

claim by arguing that any surface necessarily must reflect some, even if merely *de minimis*, amount of light.

Nothing in the present Specification indicates that the term "reflective" is intended to mean any *de minimis* amount of reflection, such that all real physical surfaces would be deemed reflective. Just the opposite, the Specification sets forth a specific purpose for the reflective nature of the surface, i.e., to disorient trapped insects.

Still further, dependent claims 22 and 23 recite this feature as their sole additional limitation. Accepting the Examiner's argument would make such claims entirely meaningless.

Accordingly, the Examiner's attempted claim construction clearly is unreasonable in view of the Specification, and therefore should not be sustained.

Second, apparently with respect to claim 13, the Examiner argues:

> "The clear plastic disc 27 of Beaton can be considered as a cover since it has the structure capable of performing the intended use. The hole in the cover would preclude insects from escaping if they were larger than the opening in the disc. The claim does not state where the cover is located when the upper section of the trap is connected to the lower section of the trap."

In this regard, the applicable feature in claim 13 is, "a cover that attaches to the enclosed lower section when the enclosed lower section is removed from the upper section."

In response to the Examiner's argument, it is noted that, even assuming that disc 27 is a "cover", there is no indication in Beaton that disc 27 attaches to Beaton's lower section (i.e., Beaton's collection jar 24). The Examiner has cited nothing in Beaton to indicate that it does. To the contrary, disc 27 is illustrated in Beaton's Figure 3 as

attaching to Beaton's upper section (i.e., sleeve 21). Lacking this disclosure, Beaton could not possibly have anticipated claim 13.

Third, with respect to claim 10, the Examiner simply acknowledges that any obviousness analysis must take into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made. While Appellants agree with this statement, nothing in it refutes the points made by Appellants in the Appeal Brief.

Fourth, with respect to claims 20 and 3, the Examiner simply asserts, "routine experimentation is known to one of ordinary skill in the art to optimize the operation of the trap such as sizes and colors to attract different insects and insects." However, once again, there is absolutely no motivation in the prior art to indicate that any particular advantage could be achieved or expected through experimentation related to the claimed features. That is, Beaton shows a particular configuration for its device, and there is nothing to suggest that any experimentation or modification with respect to the proportion of total surface area encompassed by openings 22 (which in Beaton appears to be very small) or the color of the inner surface of sleeve 21 (which in Beaton is transparent, or colorless) would have been helpful or desirable. Accordingly, the only motivation to perform such experimentation would have come from Appellants' own disclosure which, of course, would constitute impermissible hindsight.

Fifth, with respect to claim 1, the Examiner argues that because Figure 1 of Flynn shows funnel section 30 as a screen and funnel section 32 as a solid, and because these two sections have "substantially different vertical angles", they necessarily must be different funnels such that section 30 is removable from section 32.

To the contrary, however, as noted in the Appeal Brief, column 3 lines 33-38 of Flynn expressly states that these different portions of Flynn's funnel are "united together". In fact, if such portions of Flynn's funnel were not joined together into a single funnel, portion 30 would simply fall through the opening in portion 32 in the orientation depicted in Flynn's Figure 1. The Examiner has not even attempted to address these points, despite the fact that they were raised in the previous Reply Brief.

The Examiner also asserts that because column 3, lines 32-50 of Flynn describes sections 30 and 32 as two different elements, they must be separable from each other. However, such a conclusion is not warranted. Merely because two sections of a funnel are separately identified and described does not mean that they are separate funnels or that they are detachable from each other. In the present case, as noted above, Flynn expressly states that they are not detachable from each other and that they are actually just different parts of the same funnel.

Finally, in addition to Appellants' points that the Examiner has attempted to refute in the present Answer, which refuting arguments are addressed above, the Appeal Brief raises many additional points which the Examiner does not even attempt to refute. Accordingly, those points are believed to have been acknowledged by the Examiner. On that basis alone, many if not all of the Examiner's rejections should be reversed.

In view of the foregoing remarks, Appellants respectfully request that the rejection of claims 1-16 and 18-23 be reversed and a Notice of Allowance issued.

Respectfully submitted,

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